



**Remarks Prepared for Delivery by Attorney General Michael B. Mukasey
before the House Committee on the Judiciary**

**Washington, D.C.
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Chairman Conyers, Ranking Members Smith, and Members of the Committee. Thank you for the opportunity to testify about the important work being carried out by the men and women of the Department of Justice and for permitting me to highlight key challenges that lie ahead.

In the short time that I have been at the Department, I have confirmed what I had hoped and expected to find: men and women who are talented, committed, and dedicated to fulfilling its historic mission. That mission is to advance justice by defending the interests of the United States according to the law; to protect Americans against foreign and domestic threats; to seek just punishment for those who violate our laws; to assist our State and local partners in combating violent crime and other challenges; and to ensure the fair and impartial administration of justice by protecting the civil rights and liberties that are the birthright of all Americans.

These values are central to the mission of the Department and defining features of our democracy, and I thank the Committee for its efforts to help realize them.

During my tenure, I have sought opportunities to work with Congress to ensure that the Department is provided the statutory tools necessary to fulfill the Department's crucial mandate. I have also sought to keep Congress apprised of the Department's activities and policy positions where possible, and to respond to the Committee's oversight requests in a spirit of inter-branch comity that respects the institutional interests of the Department and Congress. I pledge to maintain this commitment throughout my tenure as Attorney General of the United States. I would like to focus on two crucial legislative issues pending before the Congress: the impending expiration of the Protect America Act, and the impending effective date of the United States Sentencing Commission's decision to make a wide range of violent drug offenders eligible for a retroactive reduction in their sentence. I hope to work with Members of this Committee to address each of these problems.

As this Committee is aware, the Protect America Act will soon sunset, but threats to our national security will not expire with it. I urge Congress to pass long-term legislation to update the Foreign Intelligence Surveillance Act (FISA) to ensure that this statute addresses present and emerging threats to our national security. S. 2248, the FISA Amendments Act of 2008, includes tools contained in the Protect America Act that have allowed us to close critical intelligence gaps. In addition, this legislation protects telecommunications companies now under legal assault because they are believed to have responded to the Government's call for assistance in the aftermath of September 11.

The Protect America Act is set to expire in just days, and it is vital that Congress enact long-term FISA modernization legislation, with retroactive immunity, before that Act expires.

S. 2248, which is a strong bipartisan bill reported out of the Senate Select Committee on Intelligence by a 13-2 margin, is a balanced bill that includes many sound provisions that would allow our Intelligence Community to continue obtaining the information it needs to protect the

security of America, while protecting the civil liberties of Americans. Modernization of FISA is a critical part of this vital effort.

The Department would have grave concerns about any legislative proposal that ignores the continuing nature of the terrorist threat and denies the Intelligence Community and law enforcement the long-term statutory tools necessary to defend the United States. The Department respects the oversight authority of Congress, but sunset provisions create uncertainty in the Intelligence Community and stifle the development of stable partnerships necessary to detect, deter, and disrupt threats to our national security.

It is also critical that Congress provide liability protection to electronic communication service providers in enacting a reauthorization bill. Contrary to the assertions of some, the legal protections contained in S. 2248 bill do not confer blanket immunity. Rather, protections apply in limited and appropriate circumstances, as reviewed by a court. We believe this approach represents the best way to provide retroactive immunity against these claims and urge Congress to pass legislation containing these protections.

While we appreciate the work of the House of Representatives in holding hearings and considering the challenges posed by the outdated provisions of FISA, the bill passed by the House, H.R. 3773, falls far short of providing the Intelligence Community with the tools it needs to collect foreign intelligence effectively from individuals located outside the United States. We cannot support this bill, which does not provide liability protection, would sunset in less than two years, requires prior court approval of acquisitions targeting persons outside the United States except in emergencies, and limits the type of foreign intelligence information that may be collected.

I would now like to focus on an issue that will have an impact on community safety nationwide: the Sentencing Commission's decision to apply retroactively, effective March 3, 2008, a new -- and lower -- guideline sentencing range for crack cocaine trafficking offenses.

Unless Congress acts by the March 3 deadline, nearly 1,600 convicted crack dealers, many of them violent gang members, will be eligible for immediate release into communities nationwide.

Retroactive application of these new lower guidelines will pose significant public safety risks. Many of these offenders are among the most serious and violent offenders in the federal system and their early release, without the benefit of appropriate re-entry programs, at a time when violent crime has increased in some communities will produce tragic, but predictable results. Moreover, retroactive application of these penalties will be difficult for the legal system to administer given the large number of cases eligible for resentencing, now estimated at upwards of 20,000, and uncertainties as to certain key legal issues remain unresolved.

I understand the commitment of Members of this Committee to community safety, and would appreciate the opportunity to work with this Committee and this House to address the retroactivity issue in an expedient manner, while beginning discussions on changes to the current statutory differential between crack and powder cocaine offenses.

Let me conclude with the following observation. While differences between this Committee and the Department are inevitable and are consistent with the institutional tension embedded in the Constitution, which is our Founding document, it is worthwhile to remember what unites us. We each swear an oath to defend the Constitution of the United States and to uphold the high ideals of public service to which we are entrusted. We must not lose sight of the common goals and common purpose that unify the Department of Justice and Members of the Committee who support its historic and ongoing mission.

I have submitted a more extensive statement for the hearing record and would be pleased to answer any questions you might have.

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